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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

MI22-1443

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Application Number

09/603,147

Filed

June 23, 2000

First Named Inventor

John T. Moore

Art Unit

2813

Examiner

Erik J. Kielin

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.☐ assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record.

Registration number 48,711

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

Signature

Jennifer J. Taylor, Ph.D.

Typed or printed name

509-624-4276

Telephone number

July 22, 2005

Date

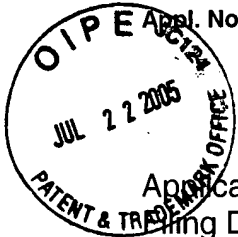
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EV550719544



Appl. No. 09/603,147

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Serial No.09/603,147
Filing Date June 23, 2000
Inventor.....John T. Moore et al.
Assignee.....Micron Technology, Inc.
Group Art Unit.....2813
Examiner Kielin, Erik J.
Attorney's Docket No.MI22-1443
Title: Capacitor Constructions, DRAM Constructions and Semiconductive Material
Assemblies

PRE-APPEAL BRIEF

Applicant requests review of the rejection of claims 76, 81, 97 and 98 under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. The Office contends that applicant's specification fails to provide support for forming a layer "consisting essentially of materials having silicon, oxygen, and from about 2% to 20% carbon, by weight". The Examiner's basis for the rejection is indicated as being an argument presented by the applicant in the response filed January 16, 2004. The text of such argument was presented at page 5, first full paragraph, of the January 16, 2004 response, and is reiterated at pages 2-3 of the present Action.

It is noted that emphasis is added by the Examiner at the reiterated paragraph (page 3, top of the present Action). The Examiner indicates that the emphasized sentence argues "that Yau cannot produce a film "consisting essentially of a material having silicon, oxygen, and from about 2% to about 20% carbon, by weight" because Yau is only using hydrogen-containing precursor materials". The Examiner's contention is clearly in error since the emphasized sentence does not mention or in any way refer to or pertain to precursor materials. Such sentence is to be considered within the context of the paragraph of which it is a part. Such paragraph discusses Yau's disclosure of the utilization of

oxidized organo-silane layers. The believed impropriety of the Examiner's out-of-context reading of applicant's argument is more fully discussed in applicant's response filed July 1, 2004 at page 3, paragraph 2 through page 4, paragraph 3. As indicated therein with direction to Yau, the Yau disclosure specifically indicates that the desired layers being formed in the Yau invention are layers of oxidized organo-silane material specifically produced under conditions where the organo-silane is not fully oxidized. Nothing in such disclosure indicates that any of the precursor materials set forth therein cannot be utilized to produce alternative layers.

The Examiner indicates that applicant is required to provide evidence that applicant's precursors "somehow omit hydrogen in the carbon-containing film" based upon the Examiner's contention that "applicant has stated on the record that the Yau precursors which contains alkyl groups lead to the claimed carbon-containing film with hydrogen, while the instant precursors, which also contain alkyl groups, somehow do not introduce hydrogen" (present Action at page 10). Applicant notes with reference to MPEP § 2164.04 that the burden is on the Examiner to establish a reasonable basis to question enablement.

However, the only basis which the Examiner has set forth for questioning enablement is an erroneous and improper reading of applicant's arguments as set forth above. Accordingly, the Examiner has failed to meet the burden of overcoming the presumption of enablement for the subject matter claimed. Accordingly, the § 112 rejection of claims 76, 81, 97 and 98 should be reversed.

Review of the rejection of claims 76, 81, 97 and 98 under 35 U.S.C. § 103(a) is requested. Claims 76, 81, 97 and 98 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over applicant's admitted prior art (AAPA referring to the Background section

of the specification); in view of McAnally, U.S. Patent No. 6,136,700; and Yau, U.S. Patent No. 6,054,379. The basis for the rejections presented in the present Action regarding claims 76, 81, 97 and 98 are identical to those in the immediately previous action dated March 3, 2004. Applicant's arguments and reasoning with respect to such rejection are fully set forth in the response filed July 1, 2004 at page 5, line 1 through page 7, line 4. Review and consideration of the content of such argument is respectfully requested.

It is noted with reference to MPEP § 2142 that the burden of establishing a *prima facie* case of obviousness is on the Examiner. With direction to MPEP § 2143 a proper obviousness rejection requires a showing of some suggestion or motivation to combine reference teachings; a reasonable expectation of success; and the combined references must teach or suggest all of the claim limitations. A *prima facie* case regarding claims 76, 81, 97 and 98 has not been established since the combination of applicant's admitted prior art, McAnally and Yau fail to disclose or suggest each and every limitation and fail to provide a basis for a reasonable expectation of success. As set forth in the response filed July 1, 2004, the combination of AAPA, Yau and McAnally fails to disclose or suggest the claim 76 recited carbon-containing sidewall spacers which extend along sidewall edges of wordlines where the carbon-containing sidewall spacers consist essentially of silicon, oxygen and from about 2% to about 20% carbon by weight (see the July 1, 2004 response at page 5, paragraph 2 through page 7, line 1).

As indicated at page 6 of the present Action, Yau is relied upon as disclosing an etch stop material containing silicon, oxygen and from 1% to 50% carbon. As acknowledged by the Examiner at page 6 of the present Action, neither AAPA nor McAnally contribute toward suggesting this recited element. However, applicant notes that

Yau specifically indicates that the methodology disclosed therein is developed and effective for producing layers in which organo groups are not fully oxidized such that hydrogen is intentionally retained in the resulting films. Accordingly, the Yau disclosure does not suggest or contribute toward suggesting the claim 76 recited spacers which consist essentially of silicon, oxygen and from about 2% to about 20% carbon, by weight. Nor does the intentional retention of hydrogen and methods for such retention disclosed by Yau contribute toward providing a reasonable expectation of successfully achieving the claim 76 recited spacers consisting essentially of silicon, oxygen and from about 2% to about 20% carbon.

Independent claim 76 is believed to be allowable for the reasons discussed above as more fully set forth in applicant's July 1, 2004 response at pages 5-7. Dependent claims 81, 97 and 98 are allowable for at least the reason that they depend from allowable base claim 76.

Since the Examiner's maintained rejections of claims 76, 81, 97 and 98 are believed to be clearly erroneous and based upon improper reading of applicant's remarks set forth in the response filed January 16, 2004, review of such maintained rejections is respectfully requested.

Respectfully submitted,

Dated:

July 22, 2005

By:

Jennifer J. Taylor
Jennifer J. Taylor
Reg. No. 48,711